

MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(ST. LOUIS CITY)

FILED
JUN 14 2019

22ND JUDICIAL CIRCUIT
CIRCUIT CLERK'S OFFICE
BY _____ DEPUTY

STATE OF MISSOURI,
Plaintiff,

vs.

WILLIAM DON TISABY,
Defendant.

B/M 07/29/1952

587-52-2236

8604 Kim Circle

Division Number:

Cause No.

1922-CR01819

SUPPRESSED INDICTMENT

Trussville, Alabama 35173

Charges:

- Count I: Perjury in an Official Proceeding Involving a Felony related to Defendant's Testimony regarding Documents or Information Received from the Circuit Attorney's Office
ON: 3/19/2018 PLACE: 1114 Market Street, Room 401, St. Louis, MO 63101
(Class D FELONY) RSMo 575.040
- Count II: Perjury in an Official Proceeding Involving a Felony related to Defendant's Testimony regarding Notes Taken of Witness Interviews During His Investigation
ON: 3/19/2018 PLACE: 1114 Market Street, Room 401, St. Louis, MO 63101
(Class D FELONY) RSMo 575.040
- Count III: Perjury in an Official Proceeding Involving a Felony related to Defendant's Testimony regarding Communications with the Circuit Attorney's Office During His Deposition
ON: 3/19/2018 PLACE: 1114 Market Street, Room 401, St. Louis, MO 63101
(Class D FELONY) RSMo 575.040
- Count IV: Perjury in an Official Proceeding Involving a Felony related to Defendant's Testimony regarding the Information Included in His Reports
ON: 3/19/2018 PLACE: 1114 Market Street, Room 401, St. Louis, MO 63101
(Class D FELONY) RSMo 575.040
- Count V: Perjury in an Official Proceeding Involving a Felony related to Defendant's Testimony regarding Questions Asked During the January 29, 2018 Interview of K.S.
ON: 3/19/2018 PLACE: 1114 Market Street, Room 401, St. Louis, MO 63101
(Class D FELONY) RSMo 575.040

2. The next day, Kimberly Gardner ("Gardner"), the Circuit Attorney of the City of St. Louis, released the following public statement announcing that she was launching an investigation into allegations against Greitens ("Greitens Investigation"):

The serious allegations against Missouri Governor Eric Greitens are very troubling. After further consideration, I have decided to launch a formal investigation into the alleged actions of Governor Greitens.

It is essential for residents of the City of St. Louis and our state to have confidence in their leaders. They must know that the Office of the Circuit Attorney will hold public officials accountable in the same manner as any other resident of our city. Both parties and the people of St. Louis deserve a thorough investigation of these allegations.

If anyone has any information related to this matter, I encourage them to contact my office immediately.

3. The Greitens Investigation centered on whether Greitens had committed a crime in connection with his extramarital relationship.

4. Contrary to normal protocol for the Circuit Attorney's Office ("CAO"), Gardner elected not to use the CAO's staff of investigators or the Police Division of the City of St. Louis ("Police Department") in connection with the Greitens Investigation.

5. Instead, on January 12, 2018, at the recommendation of A.B. (Gardner's former law school classmate who later became the Chief Investigator for the CAO), Gardner contacted Defendant William Don Tisaby ("Tisaby") about using Tisaby's services.

6. Tisaby, a former employee of the Federal Bureau of Investigation ("FBI"), had co-founded a private investigative and consulting company named Enterra, LLC ("Enterra") based in Rochester, Michigan in 2016.

7. After exchanging multiple calls and text messages, Gardner and Tisaby met over the course of two days (January 17 and 18) in Baton Rouge, Louisiana, to discuss the Greitens

Investigation. Following those meetings, Tisaby spent over nine hours reviewing background materials that had been provided by Gardner.

8. Although K.S., the alleged victim in the Greitens Investigation, never contacted law enforcement authorities or the CAO, Gardner contacted her on January 18, 2018. Thereafter, between January 18 and 23, 2018, Gardner engaged in numerous conversations with K.S.'s attorney.

9. On January 24, 2018, Gardner conducted the first interview of K.S. by herself at a hotel room in Illinois (the "First Interview"). That interview was not recorded or videotaped. At the time of the First Interview, Gardner had already hired Tisaby as the lead investigator in the Greitens Investigation.

10. On January 29, 2018, Tisaby conducted a two-hour interview of K.S. with Gardner at his side (the "Second Interview"). Although Gardner videotaped this interview, she failed to disclose that fact for several months.

11. Four weeks after the Second Interview, on February 22, 2018, Gardner filed a felony invasion of privacy charge against Greitens styled State of Missouri v. Eric Greitens, Case No. 1822-CR00642, in the Missouri Circuit Court, 22nd Judicial District, City of St. Louis ("Greitens Case").

12. In the ensuing weeks, Gardner and attorneys for Greitens became involved in numerous disputes regarding the CAO's failure to produce documents and other materials relevant to the charge against Greitens, with attorneys for Greitens complaining that she was not producing documents and information needed for their defense.

13. On March 15, 2018, four days prior to the scheduled deposition of Tisaby, the Court ordered the CAO to turn over the following documents related to Tisaby's work in the Greitens' Investigation:

Reports, communications, emails, text messages, notes, recordings, and/or any other materials by any current or former employee of Enterra, LLC, or any other investigator in this matter recording, referencing, or reflecting any and all investigative steps regarding this matter, including but not limited to any and all interviews attempted or conducted, evidence sought or obtained, searches sought or conducted, subpoenas issued, background research conducted, and forensic or scientific analyses performed.

14. The vast majority of these documents were not produced by the CAO. Instead, the CAO only provided Greitens' attorneys with Tisaby's "final reports" of the interviews he conducted of K.S. and J.W. (another witness in the Greitens Investigation), along with a redacted invoice and copies of receipts for expenses.

15. On March 19, 2018, the morning of Tisaby's deposition, Greitens' attorneys requested another court order compelling the CAO to produce the requested documents, including any interview notes that Tisaby had taken. At that hearing, as well as others, Gardner and other attorneys¹ from the CAO represented to the Court and Greitens' attorneys that no interview notes existed.

16. Following that hearing, Greitens' attorneys took Tisaby's videotaped deposition. An oath was legally administered. The deposition, which Gardner attended on behalf of Tisaby and the State of Missouri, took place at the Circuit Attorney's Office at 1114 Market Street, Room 401, St. Louis, Missouri 63101.

17. At the deposition, Tisaby testified under oath that, among other things, he:

¹ Those attorneys included R.D. (Gardner's chief trial attorney at the time), R.S. (Gardner's current chief trial attorney), and R.S. (Gardner's first assistant).

- Did not take any notes during the Second Interview;
- Did not receive any documents or information from the CAO prior to the Second Interview;
- Did not communicate with Gardner over the lunch break during his deposition;
- Did not ask K.S. any substantive questions during the Second Interview; and
- Did not consult with or retain any experts regarding the Greitens Investigation prior to his deposition to acquire a photograph at issue in that matter.

All of these statements were false.

18. Additionally, while being pressed by Greitens' attorneys about why the Second Interview was not recorded, Tisaby revealed for the first time that the Second Interview of K.S. – which had taken place nearly two months prior to his deposition – was videotaped but the equipment had “malfunctioned.” Gardner reaffirmed this in her own questioning of Tisaby:

QUESTIONS BY MS. GARDNER:

Q And you said you had -- you were -- attempted to record this interview; is that correct?

A **Yes, I did.**

Q And there was a malfunction of the equipment; is that correct?

A **Yes. The equipment was no good.**

Q So there is no recording of this interview?

A **None whatsoever.**

(295:16-23)

19. On April 9, 2018, after Greitens' attorneys filed a motion seeking to compel the production of the video of the Second Interview, Gardner asked her Computer Operations Supervisor to examine the video camera. Between the time of the Second Interview, January 29, and April 9, the supervisor had not been asked to determine whether the video or camera worked.

Upon receiving the camera from Gardner, the supervisor plugged the camera into his computer and the video played “immediately.”

20. Two days later, April 11, 2018, on the eve of a hearing regarding the video, the CAO produced a copy of the functioning video to Greitens’ attorneys. At the hearing, Gardner defended her failure to produce the video earlier by representing to the Court that the recording kept “going on and cut off” and that “numerous times many different people attempted” to get the video to work. In fact, no one from the CAO’s IT department had been asked to examine the video or camera prior to April 9, 2018.

21. Contrary to his deposition testimony, the video clearly shows, among other things, Tisaby taking notes during the entire Second Interview of K.S. Therefore, on the same day that Gardner produced the video, she also produced for the first time multiple pages of handwritten notes that both she and Tisaby had taken during the Second Interview.

22. In light of the production of the video, attorneys for Greitens asserted multiple allegations of perjury by Tisaby and sought relief from the trial court as a consequence. R.D., Gardner’s chief trial assistant and a former Circuit Court Judge, advised the Court that he was going to report the allegations of perjury to the Police Department. He did not do so, explaining that Gardner had directed him not to report the allegations to the police.

23. Gardner gave this direction to R.D. even though she admitted to the Court of Appeals that “the special investigator retained by [her] in the invasion of privacy case testified untruthfully.”

24. Prior to the commencement of the Greitens’ trial, Tisaby indicated that he would refuse to testify. Consequently, Greitens’ attorneys named Gardner as a trial witness because she

was the only witness to both the Second Interview *and* Tisaby's deposition. In explaining why Tisaby's testimony was critical to Greitens' defense, Greitens' attorneys stated to the Court:

So, we need to show how Tisaby has infiltrated this case, potentially caused -- incredible damage, not only to the case, but to the witnesses. How he has affected K.S. We can show it, we could have showed it. But we need to show... how his lies were discovered and what the nature of his lies were. We can show the beginning, we need to show the end.

And explain to the jury everything that he failed to do as an investigator, as the lead investigator, and why he lied, and explain to the jury a very critical fact. When he was there on the 29th and he looked at Ms. Gardner's notes....

I can show it by calling Ms. Gardner. Because she was a witness to it all. She watched it unfold and did nothing. And she was the one that had to then, after her investigator imploded this case, had to explain it to the Court in the various renditions of her explanation the Court heard. So that's our problem.

(Transcript of Motion Hearing, May 9, 2018)

25. After being named as a defense witness, Gardner filed a motion with the Court seeking an order prohibiting Greitens' attorneys from calling her as a witness. The Circuit Court denied Gardner's request and ordered her to answer questions under oath regarding Tisaby's false statements.

26. On May 14, 2018, rather than testify under oath, Gardner signed the following Memorandum dismissing the charge against Greitens:

Comes now State of Missouri and enters a memorandum of Nolle prosequi in the above-entitled cause. The Defense is seeking to call the Circuit Attorney as a witness in its case in chief. The State needs to seek a special prosecutor in order to protect the integrity of the Circuit Attorney's Office. The State elects not to proceed at this time and will refile charges.

27. On May 15, 2018, attorneys for Greitens contacted the Police Department to report that Tisaby committed perjury during his March 19, 2018 deposition.

28. The Police Department's subsequent investigation revealed that during the course of his March 19, 2018 deposition, Tisaby testified falsely under oath about matters which could substantially affect, or did substantially affect, the course or outcome of the Greitens Case.

COUNT I
(Perjury in an Official Proceeding Involving a Felony related to Defendant's Testimony regarding Documents or Information Received from the Circuit Attorney's Office)

29. At his March 19, 2018 deposition, Tisaby testified multiple times that he had not received any documents or other information regarding the Greitens Investigation from Gardner or any member of the CAO prior to the Second Interview of K.S.:

Q [W]ere you provided any information as regarding what [K.S.] told Ms. Gardner in her interview?

A **Mr. Martin, no, sir, because I wanted to independently get my own take of the thing. I did not ask the Circuit Attorney what her take was. I did not ask for any notes or anything else. I just -- I just wanted to have an opportunity to talk to -- talk to [K.S.] and just let her tell her side of the story.**

Q Okay. My question wasn't what you asked for. My question was were you provided any information from the interview that Ms. Gardner conducted of [K.S.]?

A **No, sir, period.**

(51:22 - 52:10)

Q And did she [Gardner] tell you what [K.S.] said to her?

A **No, sir...I specifically did not want to hear what she told the Circuit Attorney. I wanted to hear it for myself because I was conducting an -- an independent review as requested by the Circuit Attorney.**

(62:10-17)

30. This testimony was false. Gardner never attempted to correct this false testimony even though she provided him with both background materials and notes of her First Interview of

K.S.. In fact, Gardner provided Tisaby with her notes of her interview with K.S., which Tisaby used as an outline to take notes during his interview.

31. Between January 12 and 24, Tisaby and Gardner engaged in over 17 calls lasting more than five hours, as well as exchanging over 100 text messages. Furthermore, Tisaby and Gardner met in person for at least five hours in Baton Rouge, Louisiana on January 17 and 18, 2018.

32. On January 24, 2018, Gardner interviewed K.S. by herself. Later that evening, Gardner, Tisaby and M.F. (a consultant for the CAO) had a conference call that lasted over forty minutes.

33. Between January 26 and 27, 2018, Gardner, Tisaby and M.F. engaged in several additional conference calls totaling over one hour and forty minutes.

34. On January 28, 2018, the day before the Second Interview, Gardner sent Tisaby the following email with her notes from her First Interview of K.S. which were never turned over to Greitens attorneys and discovered only through this Grand Jury Investigation:

From: GardnerK@stlouiscag.org
To: williamtisaby@gmail.com; abox10@gmail.com
Subject: EG interview.docx Attorney work product
Date: Sunday, January 28, 2018 4:26:17 PM
Attachments: [EG interview.docx](#)
[ATT00001.txt](#)

Please find enclosed work product and draft of notes.

The “notes” attached to that email were six pages of single-spaced bullet-points containing details of Gardner’s interview of K.S. (“Gardner’s Typewritten Notes” or “Typewritten Notes”). Gardner’s Typewritten Notes contained statements attributed to K.S. regarding her interaction with Greitens, her ex-husband, and other pertinent details concerning the investigation, all of which

35. Gardner and other attorneys from the CAO later represented to the Court in an Opposition to a Motion for Sanctions that the Typewritten Notes were actually created by Tisaby, not her:

(Memorandum in Opposition to Motion to Compel and for Sanctions, p. 2 (emphasis added))

Tisaby's Purported Typescript Bullet Points

[illegible]

11

37. Gardner's Typewritten Notes had not been produced to counsel for the defense at the time of the representation to the Court noted in Paragraph 35. Those Notes were used by Tisaby as an outline for his Second Interview for K.S..

38. In addition to Gardner's Typewritten Notes and contrary to his deposition testimony, Tisaby received many documents from Gardner or other CAO employees prior to the Second Interview. In fact, Tisaby can be seen on the videotape of the Second Interview examining and referencing the following documents:³

- 47 page transcript of a recorded conversation between K.S. and her husband from March 2015;
- August 25, 2015 email from Greitens to K.S.;
- October 20, 2015 email from K.S. to Greitens;
- Administrative Contact page showing the email and phone number of Greitens;
- Picture of K.S.'s phone showing Greitens' phone number under a different name;
- March 25-26, 2015 email exchange between K.S. and her husband;
- July 8, 2015 email from K.S. to her husband; and
- July 3, 2015 email from Chris Canpershell (a fictitious name used by K.S.'s husband).

39. Further, the February 2, 2018 invoice that Tisaby sent Gardner (discovered during this Grand Jury Investigation) reflects that Tisaby spent approximately 9.5 hours reviewing documents and other information provided by "CA Gardner" prior to the Second Interview.⁴

1/19/18	Review of Greitens background materials provided by CA Gardner; 3 hours
1/20-28/18	Review of Greitens background materials provided by CA Gardner; Consultations with CA Gardner, records review updates; 6.5 hours

³ The attorney for K.S.'s ex-husband previously emailed these documents to the CAO on January 12, 2018. He did not provide these documents to Tisaby or anyone else.

⁴ This invoice was produced to Greitens' attorneys prior to Tisaby's deposition. However, all of the time entries were heavily redacted.

40. Despite knowing that Tisaby had reviewed Gardner's Typewritten Notes and other documents she gave him prior to the Second Interview, Gardner nonetheless asked Tisaby whether he had reviewed any notes prior to his interview of K.S. during his March 19 deposition:

QUESTIONS BY MS. GARDNER:

Q Did you look at any notes before you had this interview?

A Never.

(314:23-25)

41. Tisaby's foregoing testimony was false and could have substantially affected, or did substantially affect, the course or outcome of the Greitens Case.

42. The Grand Jurors of the City of St. Louis, State of Missouri, charge that Defendant William Don Tisaby, in violation of Section 575.040 R.S.Mo, committed the class D felony of perjury punishable upon conviction under Sections 558.002 and 558.011 R.S.Mo, in that on or about March 19, 2018, in the City of St. Louis, State of Missouri, Defendant Tisaby while a witness under oath legally administered in a deposition related to the felony invasion of privacy case (Cause No. 1822-CR00642), before Angela M. Taylor, a Registered Professional Court Reporter, with the purpose to deceive, knowingly testified falsely to material facts, namely that he did not receive or review documents or information from the Circuit Attorney's Office prior to his interview of K.S.

COUNT II

(Perjury in an Official Proceeding Involving a Felony related to Defendant's Testimony regarding Notes Taken of Witness Interviews During His Investigation)

43. At his March 19, 2018 deposition, Tisaby testified numerous times that he had not taken any substantive notes during the Second Interview of K.S., or in his interview of J.W..

44. At a hearing immediately before Tisaby's deposition began, Greitens' attorneys informed the Court that although Tisaby was ordered to produce his notes and other written materials, neither the CAO nor Tisaby had provided any of his notes to Greitens' attorneys. The following exchange ensued:

Greitens' counsel: But the log doesn't reflect that the private investigator [Tisaby] took any notes at all.

R.D.: Correct.

Greitens' counsel: I'm not sure how he wrote a report without notes.

R.D.: Only he can answer that.

Greitens' counsel: Your Honor, [R.D.] asserted that only Mr. Tisaby would know whether he took notes. Ms. Gardner is here and apparently participated in the interview. I would assume that she would know whether Mr. Tisaby took notes. We're supposed to depose him today. And they were specifically subpoenaed, they were supposed to be turned over....

The Court: Chief, you want to speak with Ms. Gardner to make sure.

(Discussion [between R.D. and Gardner] off the record.)

R.D.: There are no other notes.

(Transcript of Motion Hearing, March 19, 2018)

45. At no time during this hearing did Gardner mention the notes that Tisaby took during the Second Interview of K.S., even though she was seated at his side during the entirety of the interview.

46. Moreover, Gardner still had not provided Greitens' attorneys with Gardner's Typewritten Notes from her First Interview of K.S. (that she sent to Tisaby) nor had she provided her handwritten notes from the Second Interview.

47. Tisaby's deposition was taken following the hearing. Early in the deposition, Tisaby initially testified that he had taken notes during the Second Interview of K.S.:

Q And that you took handwritten notes of what she [K.S.] said?

A Yes, sir.

Q And you still have those notes?

A Yes, sir.

(53:2-6)

48. When pressed as to why those notes had not been produced, Tisaby testified that he would attempt to locate them during a break and would provide them to Greitens' attorneys.

49. After returning from the first break in the deposition, Tisaby changed his testimony and then testified numerous times that he had not taken any notes during the Second Interview of K.S.:

Q No. I'm talking about the pen to paper notes you took when you interviewed [K.S.] and [J.W.]?

A **Okay. Mr. Martin, I have no handwritten notes for the interview itself....**

(109:12-16)

Q And at that interview [of K.S.] you did not type out anything while she was talking, and you did not write down anything while she was talking?

A **I wrote out the preamble -- the predicate of what we discussed saying why we were there and who she was, whatever, which is a preamble thing, and then I also made a note that just -- just a handwritten note on the bottom date 1/29/2018.**

Q So you just listened and then when the interview was over tried to remember everything she said and put it down in paper?

A **Yes, sir. Best as I can recall, yes sir.**

Q So as a former FBI agent you sat through a multiple hour interview asking a woman detailed questions about her activities that are the focus of your investigation, and you took no notes and took -- typed no contemporaneous information down and just sat there and listened?

A **Until she left.**

Q You did -- you wrote -- you put nothing to paper until she left except the preamble?

A **Thank you. That's -- that's what I did and when she left, I started.**

Q Okay. And you have the preamble written in paper you believe in your hotel room?

A **It may be or it may be at home.**

(112:24-113:24)

Q Okay. But you were not taking any notes?

A **No, sir.**

(130:18-18)

Q And you did not document what [K.S.] said during those two hours in any fashion whatsoever?

A **No, sir.**

(131:21-23)

50. Tisaby's testimony was false.

51. Although Gardner was seated next to Tisaby at the Second Interview (while he was taking notes), Gardner nonetheless had Tisaby reaffirm that no notes were taken at the interview:

QUESTIONS BY MS. GARDNER:

Q And when you met with Ms. [K.S.], who was present?

A **Her attorney and yourself, Ms. Gardner.**

Q And at that meeting, was there any notes that you took?

A **No.**

Q Do you recall any notes that I took?

A **No.**

(295:8-15)

52. The videotape of the Second Interview shows Tisaby taking notes on a copy of Gardner's Typewritten Notes that she emailed to him the day before the Second Interview.

53. When the videotape was turned over on April 11, 2018, Gardner produced eleven pages of Tisaby's handwritten notes from the Second Interview of K.S.. At the same time, Gardner

also turned over her own handwritten notes from the Second Interview (which she had previously failed to do).⁵

54. Additionally, Tisaby testified at his deposition that he took no substantive notes during J.W.'s interview:

Q Okay. Because you took no notes during the interview [of J.W.]?

A No, sir, other than finding out her background.

(252:24-253:2)

55. A few days after producing the handwritten notes from K.S.'s Second Interview, Gardner also produced four pages of Tisaby's substantive handwritten notes, including direct quotations, that he took during his interview of J.W..

56. Tisaby's foregoing testimony was false and could have substantially affected, or did substantially affect, the course or outcome of the Greitens Case.

57. The Grand Jurors of the City of St. Louis, State of Missouri, charge that Defendant William Don Tisaby, in violation of Section 575.040 R.S.Mo, committed the class D felony of perjury punishable upon conviction under Sections 558.002 and 558.011 R.S.Mo, in that on or about March 19, 2018, in the City of St. Louis, State of Missouri, Defendant Tisaby, while a witness under oath legally administered in a deposition related to the felony invasion of privacy case (Cause No. 1822-CR00642), before Angela M. Taylor, a Registered Professional Court Reporter, with the purpose to deceive, knowingly testified falsely to material facts regarding notes that he took during witness interviews during his investigation.

⁵ Gardner's representations about her own handwritten notes from the Second Interview were also inconsistent. On April 12, she represented to the Court that her handwritten notes were "briefing notes that the Circuit Attorney had written herself **prior** to the video interview." Later, on May 4, Gardner admitted to the Court that her notes were actually taken **during** the Second Interview.

58.

COUNT III

(Perjury in an Official Proceeding Involving a Felony related to Defendant's Testimony regarding Communications with the Circuit Attorney's Office During his Deposition)

59. Prior to the lunch break at his March 19 deposition, Tisaby assured Greitens' attorneys that he would check his briefcase and his laptop for any notes or drafts of any reports during the break.

60. The following exchange took place after that break:

Q Mr. Tisaby, we took an over two-hour break, so that you could go back to your hotel and look for some of the records you thought you might have:

A Yes, sir.

(123:17-21)

61. Tisaby thereafter testified that he had searched his computer over the lunch break and that he found no drafts relating to the Greitens Investigation on his laptop:

Q And you -- and -- and it's your testimony under oath that you went to your laptop and you looked for earlier drafts, and you could not find your earlier drafts of the interview report of [K.S.] or [J.W.]?

A Yes, sir.

(128:2-7)

62. This testimony was false. Tisaby eventually admitted that he had **not** checked his laptop over the lunch break because he did not even bring it to St. Louis:

Q Do you have your laptop here today?

A No, sir.

(282:15-16)

Q Okay. But you didn't check your laptop?

A I didn't have my laptop.

- Q Okay. So it's possible that you have drafts of the [K.S.] or [J.W.] report on your laptop?
- A **What I'm telling you for the final time I do not have a draft of - I do not have a draft. No, sir. Period.**
- Q But you haven't checked yet?
- A **I doesn't have to check. I know.**
- Q Do you agree with me you didn't check yet?
- A **I didn't have to check because I know now.**
- Q Do you agree with me you didn't check?
- A **I didn't have to check because I don't have it. I know for a fact now I think back and look at it. I don't have it. I do not have any drafts or anything else. I do not have it.**

(287:10-288:2)

63. Greitens' attorneys asked Tisaby whether he communicated with Gardner during the break:

- Q Now, you were gone for over two hours.
- A **I was.**
- Q Did you spend some of that time talking to Ms. Gardner?
- A **I did not.**
- Q You spent --
- A **Not at all.**

(128:8-25)

64. This testimony was false.

65. Phone records reveal that Tisaby engaged in at least seven telephone calls with Gardner during the two-hour lunch break.

66. Within minutes of breaking for lunch, Gardner initiated a conference call with Tisaby and A.B. that lasted over 16 minutes.

67. Ten minutes after that call concluded, the three had another conference call that lasted over 11 minutes.

68. Shortly thereafter, the three had yet another conference call that lasted over 5 minutes.

69. In addition to those three-party calls, Tisaby and Gardner engaged in at least four other phone calls by themselves.

70. In total, and contrary to Tisaby's testimony under oath, Tisaby and Gardner spoke to each other for approximately 34 minutes during the lunch break.

71. Gardner did not attempt to correct this false testimony or clarify the record regarding the events of a few minutes earlier.⁶

72. Tisaby's foregoing testimony was false and could have substantially affected, or did substantially affect, the course or outcome of the Greitens Case.

73. The Grand Jurors of the City of St. Louis, State of Missouri, charge that Defendant William Don Tisaby, in violation of Section 575.040 R.S.Mo, committed the class D felony of perjury punishable upon conviction under Sections 558.002 and 558.011 R.S.Mo, in that on or about March 19, 2018, in the City of St. Louis, State of Missouri, Defendant Tisaby while a witness under oath legally administered in a deposition related to the felony invasion of privacy case (Cause No. 1822-CR00642), before Angela M. Taylor, a Registered Professional Court Reporter, with the purpose to deceive, knowingly testified falsely to material facts regarding communications with the Circuit Attorney's Office during his deposition.

⁶ It is worth noting that Gardner made numerous objections to Greitens' attorneys' questions and instructed Tisaby not to answer approximately ten times.

COUNT IV

(Perjury in an Official Proceeding Involving a Felony related to Defendant's Testimony regarding the Information Included in His Reports)

74. Tisaby testified in his March 19 deposition that his report contained everything that was communicated to him directly by K.S. and that all quotes were verbatim repetitions of what she told him:

Q Is this everything that she [K.S.] said to you?

A Yes, sir.

Q There's nothing that you left out?

A No, sir.

Q How much of this report is verbatim?

A Verbatim what I have in quotes. Like look on the first page. Things that I definitely know is verbatim [K.S.] [from Greitens] -- "[K.S.], great to see you. I left a book for you. Some time it's difficult getting an appointment. Do you have another way I can contact you?" Those were her exact quotes.

Q Any time there's quotation marks that's an exact quote?

A Yes, sir.

Q Okay. And would you agree that you have multiple quotes contained in this report?

A Yes, sir.

Q And your testimony is because this might be shown to a jury. You understand that?

A Understand.

Q Okay. Your testimony under oath is that you remembered each of those exact quotes?

A Yes, sir.

(159:24-160:23)

Q Well, why are you so confident of that?

A **Because I listen to what she had to say, and I -- and I guarantee that that's what she told me.**

Q You guarantee it?

A **I'm confident, sir. I am confident.**

(135: 17-21)

75. Gardner later asked Tisaby to reaffirm that his report reflected what K.S. had told him:

QUESTIONS BY MS. GARDNER:

Q To the best of your recollection, is this report a true, accurate summary of what was stated by Ms. [K.S.]?

A **Accurate summary what she told me.**

(341:12-15)

76. In fact, the majority of Tisaby's report of the Second Interview of K.S. was copied from the Typewritten Notes that Gardner had provided to him from her First Interview of K.S. The video also discloses that many of the quotes in Tisaby's report were never made by K.S. during Tisaby's interview of her.

77. Further, in his report, Tisaby excluded a large amount of information that was provided to him by K.S. at the Second Interview regarding the actions of her husband, all of which were important to the defense case.

78. Tisaby's foregoing testimony was false and could have substantially affected, or did substantially affect, the course or outcome of the Greitens Case.

79. The Grand Jurors of the City of St. Louis, State of Missouri, charge that Defendant William Don Tisaby, in violation of Section 575.040 R.S.Mo, committed the class D felony of perjury punishable upon conviction under Sections 558.002 and 558.011 R.S.Mo, in that on or

about March 19, 2018, in the City of St. Louis, State of Missouri, Defendant Tisaby while a witness under oath legally administered in a deposition related to the felony invasion of privacy case (Cause No. 1822-CR00642), before Angela M. Taylor, a Registered Professional Court Reporter, with the purpose to deceive, knowingly testified falsely to material facts regarding the information included in his reports.

COUNT V

(Perjury in an Official Proceeding Involving a Felony related to Defendant's Testimony Regarding Questions Asked During January 29, 2018 Interview of K.S.)

80. After taking an oath, Tisaby testified numerous times throughout his March 19 deposition that he did not ask a single substantive question during the Second Interview of K.S.:

Q And you never asked the key witness whether she had seen a photograph?

A No, sir....

Q But, Mr. Tisaby, wasn't she responding to your questions?

A **Mr. Martin, let me say this again. I told her to tell her story to me, and I just sat there and listened to her story.**

Q Okay. So your testimony is that you didn't ask her any questions about the events that you were investigating, you simply let her talk?

A I simply let her talk.

Q And you asked no questions?

A **No questions other than, again, like I said, her -- the normal stuff like who she was.**

Q That's the preamble stuff?

A **The preamble stuff, yes, sir.**

Q Okay. But so almost all of this [report] is simply her talking without any questions being asked?

A **Yes, sir.**

(172:8 – 173:24)

Q And you are confident that you didn't ask questions?

A **I'm confident.**

(174:2-4)

Q Because you didn't ask any questions?

A **No, sir.**

Q No, sir meaning yes, I did not ask any questions?

A **I did not ask any questions.**

(189:21-25)

Q You didn't ask?

A **I didn't ask.**

Q Because you didn't ask any questions?

A **No, sir.**

(199:17-20)

Q She didn't say she didn't want to do that?

A **Didn't ask her.**

Q Because you didn't ask her any questions?

A **No, sir.**

(205:10-13)

81. This testimony was false. In fact, Tisaby asked over 150 questions during the course of his interview of K.S. Again, Gardner made no effort to correct this testimony even though she sat by Tisaby's side as he asked those questions.

82. The video shows that Tisaby asked specific questions about:

- What occurred on the date and location the crime took place;
- What K.S. was wearing at the time of the crime;
- Information regarding the elements of invasion of privacy;

- Information regarding Greitens' exact words;
- What K.S.'s state of mind was and how she felt regarding a sex act that occurred;
- What Greitens' state of mind was at the time of the crime; and
- The names of potential witnesses who may be able to provide information in the criminal investigation, including witnesses who later testified before the Grand Jury in the invasion of privacy case.

83. Tisaby's repeated testimony that he did not ask substantive questions was false and could have substantially affected, or did substantially affect, the course or outcome of the Greitens Case.

84. The Grand Jurors of the City of St. Louis, State of Missouri, charge that Tisaby, in violation of Section 575.040 R.S.Mo, committed the class D felony of perjury punishable upon conviction under Sections 558.002 and 558.011 R.S.Mo, in that on or about March 19, 2018, in the City of St. Louis, State of Missouri, Tisaby while a witness under oath legally administered in a deposition related to the felony invasion of privacy case (Cause No. 1822-CR00642), before Angela M. Taylor, a Registered Professional Court Reporter, with the purpose to deceive, knowingly testified falsely to material facts regarding questions asked during the January 29, 2018 interview.

COUNT VI

(Perjury in an Official Proceeding Involving a Felony related to Defendant's Testimony regarding His Consultation with Experts)

85. Tisaby testified that he had not sought out any computer or forensic experts to try to obtain a copy of the photograph at issue in the criminal case.

86. A key component in the Greitens case was a picture that Greitens allegedly took with his cellphone. On numerous occasions, Greitens' attorneys asked the CAO and Tisaby for

the photograph or for any information regarding the photo. In his deposition, Tisaby denied taking any steps to try to obtain the photograph:

Q So your testimony is you're unaware of anybody that has made any effort to locate any alleged photograph?

A **Not that I know of.**

(68:20-23)

Q But you actually testified that Enterra doesn't have the capability of searching for any photograph?

A **I didn't say that.**

Q What did you say?

A **I said that -- I said subpoena power. I'm going to have subpoena power, but technically I got to -- I'll just -- I may try to find out if somebody technically can look for it for us without having subpoena power. I mean, through normal -- through normal channels.**

Q You haven't done that at this --

A **I haven't done that at this point. That was probably a final step. Haven't done yet, sir.**

Q Are you planning on doing it?

A **I anticipate doing it.**

Q When?

A **Get done with this. My next steps. My next -- my following steps. My next step is to take a look at that, too. There's other things that we want to take a look at to close that out and that be one of the things that we may do.**

Q What else?

A **Talk to somebody technically how we may go about trying to get this --**

Q Get what?

A **You said the photo. You asked me I was trying to get the photo.**

Q I just asked you if you had looked for it.

A **No. Not yet.**

Q Did Ms. Gardner ask you to look for it?

A **No, sir**

(69:2-70:15)

Q And so tell me exactly what are the steps you're planning on doing to determine whether, one, there was a photograph and, two, whether that photograph was transmitted.

A **Consult with an expert.**

Q And – and that's – that's the step you plan on doing?

A **My next step.**

(73:10-17)

87. Gardner followed up with her own questions regarding efforts to obtain the alleged photograph:

QUESTIONS BY MS. GARDNER:

Q To the best of your recollection, when speaking with the Circuit Attorney on this investigation, were you supposed to do any follow up on a photo?

A **No, I was not.**

(315:22-316:1)

88. Tisaby's testimony was false.

89. In fact, approximately three weeks prior to his deposition, Tisaby contacted Vestige Limited, a digital forensic investigative company, and asked it for help in obtaining the alleged photograph at issue in the Greitens Case. Thereafter, Tisaby, Gardner, and A.B. all communicated with Vestige by telephone multiple times prior to Tisaby's deposition. Vestige advised Tisaby about difficulties in obtaining the alleged photograph.

90. Tisaby's foregoing testimony was false and could have substantially affected, or did substantially affect, the course or outcome of the Greitens Case.

91. The Grand Jurors of the City of St. Louis, State of Missouri, charge that Defendant William Don Tisaby, in violation of Section 575.040 R.S.Mo, committed the class D felony of perjury punishable upon conviction under Sections 558.002 and 558.011 R.S.Mo, in that on or about March 19, 2018, in the City of St. Louis, State of Missouri, Defendant Tisaby while a witness under oath legally administered in a deposition related to the felony invasion of privacy case (Cause No. 1822-CR00642), before Angela M. Taylor, a Registered Professional Court Reporter, with the purpose to deceive, knowingly testified falsely to material facts regarding his consultations with experts.

COUNT VII
(Tampering with Physical Evidence)

92. Although Tisaby testified that he turned over everything that was required at the time of his March 19 deposition, he concealed several documents in his possession with the purpose of impairing the availability of those documents to Greitens' counsel in the Greitens Case:

- Gardner's Typewritten Notes which were emailed to him on January 28, 2018;
- Tisaby's January 23, 2018 Greitens Matter – Notes/Comments; and
- Tisaby's January 28, 2018 Greitens Matter Initial Investigative Steps.⁷

93. Gardner's Typewritten Notes were never produced to Greitens' counsel in their original format. Instead, once the videotape was produced, the CAO provided to Greitens' attorneys Tisaby's handwritten notes from his interview of K.S. The document that Tisaby was

⁷ These documents were only discovered after the Police Department executed a search warrant on the CAO.

writing on was in fact Gardner's Typewritten Notes. The only difference between the two documents was that Tisaby's document was double spaced and did not include the last two pages of Gardner's Typewritten Notes. (These two pages were removed and remained concealed throughout the entirety of the Greitens Case.)

94. The two concealed pages contained statements made by K.S. that included, but were not limited to, the following direct quotes from the two pages:

- KS her ex husband was so obsessed. Before his birthday so much crazy;
- KS stated she was scared of EG and her ex husband;
- KS told EG I'm not going to have sex with you because I have not been with anyone else for 13 years. EG did not push.

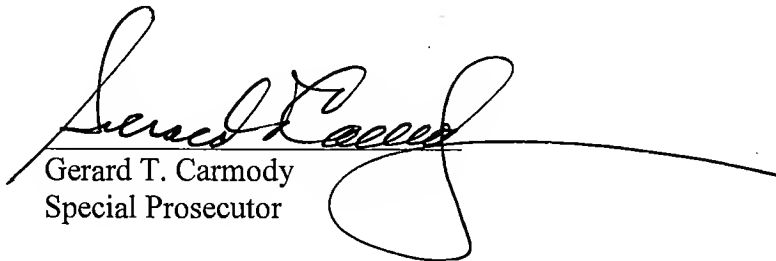
95. On January 23, 2018, Tisaby emailed to Gardner, M.F., and A.B. a document titled "Greitens Matter – Notes/Comments 01/23/2018." In that document, Tisaby provides advice on how Gardner's interview with K.S. should be conducted. This document was concealed throughout the entirety of the Greitens Case.

96. On January 28, 2018, Tisaby emailed Gardner, M.F., and A.B. a document titled "Greitens Matter Initial Investigative Steps." This document outlined the investigative steps that had already been taken, for example: "Initial interview of K.S. to establish a rapport between the St. Louis Circuit Attorney's Office (CAO) and K.S. Done – Kimberly," as well as Tisaby's strategy for the remaining investigation. This document was concealed throughout the entirety of the Greitens Case.

97. The Grand Jurors of the City of St. Louis, State of Missouri, charge that Defendant William Don Tisaby, in violation of Section 575.100, RSMo, committed the class E felony of tampering with physical evidence, punishable upon conviction under Sections 558.002 and 558.011, RSMo, in that between March 19, 2018 and May 14, 2018, in the City of St. Louis, State of Missouri, Defendant Tisaby suppressed and/or concealed (1) Gardner's Typewritten Notes

which were emailed to Defendant on January 28, 2018, (2) Tisaby's January 23, 2018 Greitens Matter – Notes/Comments and/or (3) Tisaby's January 28, 2018 Greitens Matter Initial Investigative Steps with the purpose to impair their availability in the investigation of Eric Greitens, an official proceeding and/or investigation, and thereby impaired and obstructed the defense of Eric Greitens for the crime of invasion of privacy, a felony.

A true bill


Foreman
Gerard T. Carmody
Special Prosecutor